

WILLIAM R. TAMAYO -- #084965 (CA)
JONATHAN T. PECK -- #12303 (VA)
EVANGELINA FIERRO HERNANDEZ -- #168879 (CA)
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
San Francisco District Office
350 The Embarcadero, Suite 500
San Francisco, California 94105
Telephone: (415) 625-5622
Facsimile: (415) 625-5657
Evangelina.Hernandez@eeoc.gov

Attorneys for Plaintiff EEOC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

DOLE FRESH VEGETABLES, INC.,

Defendant.

Civil Action No. CV11-4827 CRB

CONSENT DECREE

I. INTRODUCTION

The parties to this Agreement are the U.S. Equal Employment Opportunity Commission (“EEOC”) and Dole Fresh Vegetables, Inc. (“Dole”).

This matter arises from a charge of disability discrimination filed by Gustavo Pizano Bribiesca (“Charging Party”). The EEOC issued a determination letter finding that Charging Party was discriminated against on the basis of his disability in violation of the Americans with Disabilities Act of 1990 (ADA). Conciliation was unsuccessful and on September 30, 2011 the EEOC filed this action pursuant to the ADA

The parties being aware of the risks, uncertainties and costs of continued litigation want to conclude fully and finally all claims arising out of this lawsuit without expenditure of further

resources and expenses in contested litigation. They enter into this Consent Decree to further the objectives of equal employment opportunity as set forth in the ADA.

The Court has reviewed this Consent Decree in light of the pleadings, the record herein, the applicable law, and now approves this Consent Decree.

II. NON-ADMISSION OF LIABILITY

1. This Consent Decree is not an adjudication or finding on the merits of this case and shall not be construed as an admission of a violation of the ADA by Defendant. Defendant has denied and continues to deny all allegations of wrongdoing in the charge of discrimination and the EEOC's lawsuit.

III. GENERAL PROVISIONS

2. This Court has jurisdiction over the subject matter and the Parties to this lawsuit.

3. This Consent Decree constitutes a full resolution of EEOC's complaint in this action and the underlying charge of discrimination filed with the EEOC.

4. This Consent Decree shall become effective upon its entry by the Court.

5. Each party shall bear its own costs and attorneys' fees in this action.

IV. GENERAL PROVISIONS

6. **ADA:** Defendant, its officers, agents, management (including supervisory employees) or any of them, agrees to comply with all requirements of the ADA with respect to reasonable accommodation of its employees in the workplace.

7. **Retaliation:** Defendant, its officers, agents, management (including supervisory employees), successors or assigns, or any of them, agrees not to engage in, implement or permit any action, policy or practice with the purpose of retaliating against any current or former employee of Defendant because she or he complained about disability discrimination, filed a Charge of Discrimination alleging any such practice, testified or participated in any manner in any investigation (including, without limitation, any internal investigation undertaken by

Defendant), proceeding or hearing in connection with this case; or was identified as a possible witness in this action.

V. MONETARY RELIEF

8. In settlement of the claims in this action, Defendant will pay the Charging Party the sum of TWO THOUSAND DOLLARS (\$2,000.00).

9. The above settlement amount for Charging Party shall be issued in a check drafted in Charging Party's name and mailed to his address as provided by the EEOC. Defendant shall make payment in the form of a business check, cashier check or certified check. Applicable withholding taxes shall be made from the settlement, as appropriate.

10. Payment shall be made no later than twenty (20) days after the entry of this Agreement.

11. At the time that Defendant sends the checks to the Charging Party, it shall provide a copy of each check to EEOC counsel of record, Evangelina Fierro Hernandez, 350 The Embarcadero, Suite 500, San Francisco, CA 94105-1260.

VI. SPECIFIC PROVISIONS

12. Training of Managers/Supervisors:

Within 180 days of entry of this Consent Decree, Defendant shall provide four hours of disability training to all its managers and supervisors employed at its Salinas, California location. This training may be conducted in conjunction with other regularly scheduled EEO training provided to managers and supervisors. A refresher course of at least two hours shall be conducted no later than May 31, 2013. The training shall be conducted by persons who are well-versed and experienced in the area of employment law under Federal and state statutes and laws. The cost of the training shall be borne by Defendant.

The purpose of said training shall be to give participants an in-depth focus on the ADA, as Amended, EEOC Regulations and developing ADA legal issues, including, but not limited to, the expanded definition of what constitutes a disability under the ADA, the importance of the ADA interactive process, the specifics of the "direct threat" defense, medical examinations and taking action with respect to requests for accommodation.

13. **Expungement of Records and Disclosure of Information Regarding the Charging Party's Employment:**

Defendant shall expunge from the Charging Party's personnel files any references to his ADA charge of discrimination against Dole and this lawsuit. In the event that Defendant receives a reference check from a prospective employer, Defendant shall disclose only his dates of employment, position held and final rate of pay.

14. **Reports to the Commission:**

Training Report: All persons attending mandatory disability related training pursuant to this Consent Decree shall sign an acknowledgment of their attendance at the training, the date thereof, and their job title. Defendant shall retain the originals of these acknowledgments for such time period as required by law and provide the EEOC with a copy upon request.

VII. RETENTION OF JURISDICTION AND EXPIRATION OF CONSENT DECREE

15. This Consent Decree shall terminate automatically terminate two years from the date of entry by this Court unless the EEOC petitions the court for an extension of the Agreement for noncompliance. If the Commission determines that Defendant has not complied with the Consent Decree, the Commission will provide written notification of the alleged breach to Defendant and will not petition the Court for enforcement sooner than thirty (30) days after providing written notification. The thirty-day period following written notice shall be used by the parties for good faith efforts to resolve the issue. If the Commission petitions the Court and the Court finds Defendant to be in substantial violation of the terms of the Agreement, the Court may extend this Consent Decree.

E-FILING CERTIFICATION: I, Evangelina Fierro Hernandez, counsel for EEOC certify that I have obtained the concurrence of defense counsel for the filing of this Consent Decree.

P. DAVID LOPEZ
General Counsel

JAMES LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

DATED: 8/27/2012

/s/ William R. Tamayo
WILLIAM R. TAMAYO
Regional Attorney

DATED: 8/27/2012

/s/ Jonathan T. Peck
JONATHAN T. PECK
Supervisory Trial Attorney

DATED: 8/27/2012

/s/ Evangelina Fierro Hernandez
EVANGELINA FIERRO HERNANDEZ
Senior Trial Attorney

Attorneys for Plaintiff
Equal Employment Opportunity Commission
San Francisco District Office
350 The Embarcadero, Suite 500
San Francisco, California 94105-1260

DATED: 8/27/2012

/s/ Paul Phillips
PAUL PHILLIPS

Attorney for Defendant
COTE LAW GROUP
2408 Professional Drive, Suite 100
Roseville, California 95661

APPROVED AND SO ORDERED.

DATED: September 4, 2012

